

The Honorable Barbara Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LISA ELISARA, Administrator of the Estate of
Iosia Faletogo, A.F., a minor individual; R.F., a
minor individual;

Plaintiffs,

vs.

THE CITY OF SEATTLE, a municipal
Corporation;

Defendants.

No. 2:21-cv-00283-BJR

PLAINTIFFS' PETITION FOR
APPROVAL OF SETTLEMENT

NOTE ON MOTION CALENDAR:
OCTOBER 5, 2021

Plaintiffs have conferred with the other parties and verified that this petition will be
unopposed. As such, it is noted on the day of filing pursuant to LCR 7(d)(1).

I. RELIEF REQUESTED

Pursuant to LCR 17(c) and Washington SPR 98.16W, Plaintiffs request that this Court
approve the proposed settlement, approve the allocation of the settlement between the decedents'
two minor beneficiaries, and approve the proposal to invest the money in a combination of
structured settlements and blocked accounts.

II. STATEMENT OF FACTS

This case arises out of the fatal shooting of Iosia Faletogo by a Seattle Police Department
officer on December 31, 2018. The decedent is survived by two first tier beneficiaries, A.F. and
R.F. Both of these beneficiaries are minors. Because Plaintiffs' economic loss claims were

1 mostly based on loss of support to decedents' minor beneficiaries, Plaintiffs' claimed damages
 2 are predominantly related to claims maintained for the benefit of A.F. and R.F., rather than for
 3 the benefit of the estate. *See* RCW 4.20.010, 4.20.020, 4.20.046.

4 The King County Superior Court in case no. 19-4-02907-0 initially appointed Sandra
 5 Bates Gay to serve as probate guardian ad litem and then extended her authority to serve as
 6 settlement guardian ad litem in advance of meditation, to investigate and report on the adequacy
 7 of any proposed agreement on behalf of A.F. and R.F. SGAL Report, Dkt. 22, Exh. A.

8
 9 Plaintiffs and the City of Seattle have reached an agreement to settle Plaintiffs' claims
 10 against the City of Seattle, subject to Court approval. The proposed settlement includes payments
 11 worth a present-day value of \$515,000 to resolve all of Plaintiffs' claims. **As part of the**
 12 **proposed settlement, the parties agreed that the City would not be responsible for the**
 13 **SGAL fees.**

14 Of the \$515,000 lump sum, Plaintiffs are requesting that \$10,000 be allocated to
 15 reimburse the decedents' mother for funeral and burial expenses, \$5,000 be allocated to
 16 reimburse the Plaintiffs for expenses related to the SGAL (with any SGAL expenses in excess of
 17 \$5,000 to be deducted from Plaintiff's counsel's fee),¹ and the remaining proceeds to be divided
 18 evenly amongst A.F. and R.F.

19
 20 SGAL Sandra Bates Gay is claiming \$7,075.50 in attorneys' fees, \$2,075.50 of which
 21 exceeds the \$5,000 that was earmarked for this purpose and should be deducted from Plaintiff's
 22 counsel's fee.
 23
 24
 25

26 ¹ For the Court's information, the numbers have become atypically confusing because Plaintiffs initially anticipated
 27 that \$5,000 would be sufficient to cover the SGAL's costs and fees. Because the SGAL incurred more than that
 amount, Plaintiffs' counsel are voluntarily reducing their fee by that amount in order to avoid any fee disputes with
 the SGAL and assure that the amount paid to A.F. and R.F. is unchanged.

1 Plaintiffs' counsel's fee agreement with Plaintiffs is for a 40% contingency fee. Although
 2 the gross payments from the City associated with this agreement is \$515,000, Plaintiffs' counsel
 3 are considering the underlying \$500,000 to be the appropriate number on which to calculate
 4 Plaintiffs' counsel's contingent fee. However, Plaintiffs' counsel are voluntarily reducing their
 5 fee from \$200,000 to \$158,066.67. *Id.* at ¶5. Plaintiffs' counsel's advanced litigation costs (not
 6 including SGAL costs/fees) are \$6,524.49. Dkt. 24, Declaration of J. Nathan Bingham, ¶6; Exh.
 7 2.

8
 9 Accordingly, the proposed disbursement of the remaining \$500,000 is more simply
 10 summarized as 1/3 of \$500,000 to A.F., 1/3 of \$500,000 to R.F., and 1/3 of \$500,000 to
 11 Plaintiffs' counsel for attorney's fees, reimbursement for litigation costs, and to pay the SGAL
 12 fees in excess of \$5,000.

13 Of the \$166,666.67 allocated to each beneficiary, the SGAL proposes that \$16,666.67 be
 14 placed in a blocked account to be overseen by the King County Superior Court and \$150,000 to
 15 be used to fund a structured settlement. The obligation to make periodic payments described
 16 above will be assigned to MetLife Assignment Company, Inc. ("Assignee") and funded by an
 17 annuity contract issued by Metropolitan Tower Life Insurance Company ("Annuity Issuer"),
 18 rated A+ (Superior) by A.M. Best Company. The future structured settlements' periodic
 19 payments will be as follows.

20
 21 *For R.F.:*

- 22 • \$15,000.00 payable semi-annually, guaranteed for 4 years, beginning on 7/1/2033,
 23 with the last guaranteed payment on 1/1/2037.
- 24 • \$25,000.00 guaranteed lump sum payable on 9/26/2037.
- 25 • \$61,926.30 guaranteed lump sum payable on 9/26/2039.

Periodic payments to R.F. and related fees, if any, have a cost of \$150,000.00.

For A.F.:

- \$15,000.00 payable semi-annually, guaranteed for 4 years, beginning on 7/1/2034, with the last guaranteed payment on 1/1/2038.

- \$25,000.00 guaranteed lump sum payable on 3/8/2039.

- \$70,035.19 guaranteed lump sum payable on 3/8/2041.

Periodic payments to A.F. and related fees, if any, have a cost of \$150,000.00.

Summary of proposed disbursement:

Total recovery from the City:	<u>\$515,000</u>
Reimbursement to decedent's mother for funeral/burial expenses:	<u>\$10,000</u>
SGAL costs:	<u>\$7,075.50</u>
Amount to Krutch Lindell Bingham Jones for reduced attorneys' fees (\$158,066.67), cost reimbursement (\$6,524.49)	<u>\$164,591.16</u>
Remainder to fund blocked account and structured settlement for A.F.:	<u>\$166,666.67</u>
Remainder to fund blocked account and structured settlement for R.F.:	<u>\$166,666.67</u>

III. ISSUES PRESENTED

1. Whether this Court should approve the proposed settlement between Plaintiffs and the City of Seattle?
2. Whether this Court should approve the SGAL's proposed allocation of the settlement proceeds?
3. Whether this Court should approve the plan to place the amounts paid to each minor beneficiary in blocked accounts and structured settlements?

IV. EVIDENCE RELIED UPON

Declaration of J. Nathan Bingham and exhibits thereto, Dkt. 24; Report of SGAL Sandra Bates Gay and exhibits thereto, Dkt. 22 (filed under seal); and the court file.

V. AUTHORITY

LCR 17(c) provides that “[i]n every case where the court is requested to approve a settlement involving the claim of a minor or incompetent, an independent guardian ad litem, who shall be an attorney-at-law, must be appointed by the court,” to “investigate the adequacy of the offered settlement and report thereon.”

Washington state law has separate minor settlement requirements. *See, e.g.*, SPR 98.16W(a) (“[T]he court shall determine the adequacy of the proposed settlement on behalf of [an unemancipated minor] and reject or approve it.”); *Scott v. Pac. W. Mountain Resort*, 834 P.2d 6, 11 (1992) (“Under Washington law[,] parents may not settle or release a child's claim without prior court approval.”); *Tinket v. Kent Gypsum Supply, Inc.*, 977 P.2d 627, 628, n. 1 (1999) (“Court approval is necessary when settlements involve minors.”); *Kommavongsa v. Haskell*, 67 P.3d 1068, 1084 (2003) (Ireland, J., dissenting) (citing SPR 98.16W).

Courts typically treat the requirements of state law and LCR 17(c) as two distinct sets of requirements. *See, e.g.*, *M.F. v. United States*, No. C13-1790JLR, 2015 WL 630946, at *4 (W.D. Wash. Feb. 12, 2015). However, federal district courts regularly address the state and federal requirements at the same time. *See, e.g.*, *Briscoe v. City of Seattle*, No. 2:18-cv-00262-TSZ, Dkt. 149 (W. D. Wash. April 27, 2021) (federal district court approved settlement in compliance with LCR 17 and SPR 98.16W); *M.W. v. Safeway, Inc.*, No. 2:18-CV-01404-BAT, 2019 WL 4511927, (W.D. Wash. Sept. 19, 2019) (federal district court approved settlement in compliance with Fed. R. Civ. P. 17 and SPR 98.16W).

Plaintiffs hereby request that the Court approve the settlement under both state law and LCR 17, to approve the allocation of the monetary payment as described above, to approve the

1 plan to divide the proceeds between blocked accounts and structured settlements, and to approve
2 Plaintiffs' counsel's attorneys' fees and reimbursement for costs.

3
4 Respectfully submitted this 5th day of October, 2021.

5 KRUTCH LINDELL BINGHAM JONES, P.S.

6 By: /s/ J. Nathan Bingham, WSBA #46325

7 J. Nathan Bingham, WSBA #46325

8 James T. Anderson, WSBA #40494

9 Matthew K. Clarke, *pro hac vice*

10 3316 Fuhrman Ave E, Suite 250

11 Seattle, Washington 98102

12 Telephone: (206) 682-1505

13 Facsimile: (206) 467-1823

14 Email: jnb@krutchlindell.com

15 jta@krutchlindell.com

16 mkc@krutchlindell.com

17 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on this date I caused to be served in the manner indicated a copy of the foregoing pleading and any other documents/pleadings filed along with this pleading upon the following persons:

Ghazal Sharifi, WSBA #47750
 Seattle City Attorney's Office
 701 Fifth Avenue, Suite 2050
 Seattle, WA 98104
 Telephone: (206) 684-8200
 Fax: (206) 684-8284
ghazal.sharifi@seattle.gov

Attorney for Defendant City of Seattle

☐ via U.S. Mail

☐ via Fax

☒ via E-service

☐ via Messenger

Signed in Seattle, Washington on the 5th day of October, 2021.

/s/ Pia Kim

Pia Kim, Paralegal